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OFFICE OF PETITIONS

In re Application of :
Zhang et al. :
Application No. 09/345,193 :
Filed: June 30, 1999 : ON PETITION
Attorney Docket Number: :
112025-0138 :

This Decision is in response to the Petition to Correct Filing Date, filed April 28, 2004. The correspondence is properly treated as a petition under 37 CFR 1.53.

The petition is dismissed.

Any further petition to revive the above-identified application must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.53." This is **not** final agency action within the meaning of 5 U.S.C. § 704.

Background

The above-identified application, including 31 pages of specification and 17 claims, and 7 drawing sheets, was filed on June 30, 1999. Applicant files the instant petition and notes that the specification filed with the application on June 30, 1999, refers to and incorporates by reference a second application; however, the second application was not filed until July 30, 1999¹. Applicant asserts that, because the second application describes the preferred embodiment of an aspect of

¹ The specification in the above-identified application refers and seeks to incorporate by reference to a "co-pending U.S. Patent Application Ser. No. [] entitled A Protocol to Coordinate Network End Points to Measure Network Latency...", when in fact no co-pending U.S. Patent Application entitled A Protocol to Coordinate Network End Points to Measure Network Latency, existed. See, *In re Glass*, 492 F.2d 1228, 181 U.S.P.Q. (BNA) 31 (C.C.P.A. 1974).

the present application, the second application contains material that is essential to the specification of the above-identified application. As such, Applicant argues, the above-identified application was incomplete for purposes of obtaining a filing date.

Applicable Law

37 CFR 1.53, Application number, filing date, and completion of application, provides, in relevant part, that

[t]he filing date of an application for patent filed under this section, except for a provisional application under paragraph (c) of this section or a continued prosecution application under paragraph (d) of this section, is the date on which a specification as prescribed by 35 U.S.C. 112 containing a description pursuant to § 1.71 and at least one claim pursuant to § 1.75, and any drawing required by § 1.81(a) are filed in the Patent and Trademark Office. No new matter may be introduced into an application after its filing date.

37 CFR 1.53(b).

Further to this, the Manual for Patent Examining Procedure ("MPEP") provides that

[u]nder 37 CFR 1.53(b), a filing date is assigned to a nonprovisional application as of the date a specification containing a description and claim and any necessary drawings are filed in the U.S. Patent and Trademark Office (USPTO). Failure to meet any of the requirements in 37 CFR 1.53(b) will result in the application being denied a filing date. *The filing date to be accorded such an application is the date on which all of the requirements of 37 CFR 1.53(b) are met.* (Emphasis supplied).

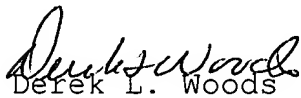
Conclusion

For purposes of receiving a filing date, the above-identified application was complete on the day that the specification

a description and claims (31 pages), and 7 drawing sheets, were filed in this Office.

The application is an Image File Wrapper ("IFW"), and as such, no forwarding of the file is necessary.

Telephone inquiries concerning this matter should be directed to the undersigned at (571) 272-3232.



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Office of Petitions